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UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

KYLE CURTIS ASH,

Debtor,

Bk. No. 21-20922-FEC

Chapter 13

DCN. No. RDW-001

MOTION FOR RELIEF
FROM AUTOMATIC STAY

Hearing-

Date: June 29, 2021

Time: 09:00am

Place: Bankruptcy Court
501 I Street, Seventh Floor
Courtroom 28
Sacramento, California

VIA TELEPHONE/VIDEOCONFERENCE

ACM INVESTOR SERVICES, INC., its successors and/or assignees,
("Movant"), moves the Court for relief from the Automatic Stay provided by 11 U.S.C. Section 362. This motion seeks an Order terminating the Automatic Stay of 11 U.S.C. Section 362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party (and its Trustee) may take all steps necessary under State or Federal law to commence or complete its foreclosure under the Deed of Trust and thereafter take possession of the subject property.

1 In addition, and if applicable, Lender will seek an order waiving the requirements
2 of Federal Rule of Bankruptcy Procedure 4001(a)(3), and California Civil Code § 2924g(d), so
3 that any foreclosure sale may be held without the applicable waiting period specified therein.

4 In addition, Movant shall seek an order pursuant to 11 U.S.C. § 362(d)(4) so that any
5 order for relief will be binding in any other case under this title purporting to affect the subject
6 property filed within two (2) years of the order for relief.

7 This motion is brought pursuant to 11 U.S.C. Section 362(d)(1) for "cause" and
8 due to the following:

9 The failure of Debtor to make required payments as set forth in the attached
10 Declaration of Kathie Knighten. Debtor failure to make required payments provides "cause" for
11 relief from the Automatic Stay in accordance with the ruling of the Bankruptcy Appellate Panel
12 in In re Proudfoot, 144 B.R. 876 (9th Cir. BAP 1992).

13 The property was transferred to Debtor by D&D REIT, INC, a California
14 Corporation, who was the original trustor. The transfer was made without the prior written
15 consent of Movant. The Note contains a Due on Sale Clause which is enforceable under the
16 Garn St. Germaine Act, Depository Institutions Act of 1982, (Public Law 97-320. 96 Stat 1469).
17 The full amount of the loan is due and payable due to the fraudulent transfer.

18 Lender's loan fully matures on August 1, 2021.

19 To the extent applicable, Movant will move this Court for relief from the co-
20 debtor stay contained in U.S.C. §1301 and will request that any Order allowing relief from stay
21 against Debtor, or conditioning continuance of the automatic stay against Debtor, be deemed
22 applicable to the co-debtor and the co-debtor stay. (See In re Jimmy Leonard, 307 B.R. 611
23 (E.D.TN 2004) and In re: Pardue, 143 B.R. 434 (E.D. TX 1992)). Furthermore, according to the
24 Court in In re: Jacobsen, 20 B.R. 648 (B.A.P. 9th Cir. 1982), a Debtor should not be entitled to
25 confirm a Chapter 13 plan, without consenting to relief from the co-debtor stay, so that the
26 Creditor can proceed with collecting the deficiency on the loan from the co-debtor, who has not
27 filed for protection under the Bankruptcy Code, where the debt is not provided in the Plan. Here,
28 D&D REIT, INC ("Borrower") is the borrower on the loan secured by the Property, not the

1 Debtor. Movant's interest would be irreparably harmed by continuation of the stay in accordance
2 with the declaration of Kathie Knighten.

3 In addition, and in the event that the Court continues the Automatic Stay, Movant
4 will seek adequate protection of its secured interest pursuant to 11 U.S.C. Sections 361 and 362,
5 including a requirement that Debtor reinstate all past arrearages and immediately commence
6 regular monthly payments.

7 Furthermore, Movant will also seek attorneys' fees and costs incurred in bringing
8 the Motion. Movant requests such fees pursuant to the Note and Deed of Trust securing
9 Movant's claim or pursuant to 11 U.S.C. Section 506(b). Post petition attorneys' fees and costs
10 for the within motion may be added to the outstanding balance of the subject Note pursuant to
11 Travelers Casualty v. Pacific Gas and Electric Co., 549 U.S. 443 (2007).

12 In addition, Movant requests such further relief as is just.

13 This Motion shall be based on these moving papers, the Relief from Stay
14 Information Sheet, the attached Declaration of Kathie Knighten, and the pleadings and records
15 on file with this Court.

16 In the event neither the Debtor nor Debtor's counsel or any interested party
17 appears at a hearing on this Motion, the Court may grant relief from the Automatic Stay
18 permitting moving party to foreclose on the Debtor's real Property located at **531 WESTWOOD**
19 **COURT, VACAVILLE, CA 95688**, which is legally described in the Deed of Trust attached to
20 the Declaration of Kathie Knighten under all defaults, including any pre-petition defaults, and
21 thereafter obtain possession of such Property without further hearing, or may enter an order
22 conditioning the continuance of automatic stay.

23 No party in interest shall be required to file written opposition to the Motion. Opposition,
24 if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is
25 other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.
26 WHEREFORE, Movant prays for judgment as follows:

- /s/ REILLY D. WILKINSON
REILLY D. WILKINSON